

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEMETRIUS DEMARCO SPENCER,

Defendant.

ORDER

Criminal No. 12-280 (MJD/JJK)

Richard A. Newberry, Jr., Esq., Assistant United States Attorney, Counsel for Plaintiff.

Douglas Olson, Esq., Assistant Federal Defender, Counsel for Defendant.

This matter is before the Court on three Motions in Limine: Government's Motion in Limine to Allow Use of Prior Felony Convictions [Docket No. 43], Government's Motion in Limine to Allow Use of 404(b) Evidence [Docket No. 42], and Defendant's Motion to Exclude Rule 404(b) Evidence [Docket No. 40]. This matter is also before the Court on Defendant's Motion to Dismiss Based on Intentional Destruction of Potentially Material Exculpatory Evidence. [Docket No. 41]

A. Government's Motion in Limine to Allow Use of Prior Felony Convictions [Docket No. 43]

The Defendant has four prior convictions. Should the Defendant decide to testify in this case, the Government intends to impeach him with three of his prior convictions pursuant to Fed. R. Evid. 609(a). The Court grants the Government's motion in part and denies the motion in part. The Court finds that the Government may use the Defendant's September 18, 2003 conviction for possession of a pistol by a prohibited person and the Defendant's September 11, 2007 conviction for aggravated robbery to impeach the Defendant. The Court denies the Government's motion with respect to the Defendant's September 12, 2007 conviction for assault in the third degree and the Defendant's December 15, 2000 conviction for possession of a pistol by a prohibited person.

B. Government's Motion in Limine to Allow Use of 404(b) Evidence [Docket No. 42], and Defendant's Motion to Exclude Rule 404(b) Evidence [Docket No. 40]

The Government seeks to admit evidence of Defendant's two prior state court offenses and convictions for being a felon in possession of a firearm. The Defendant moves to exclude this evidence.

Rule 404(b) prohibits the use of evidence of a defendant's other crimes, wrongs, or bad acts to prove the character of a person in order to show action in conformity therewith. Rule 404(b), however, permits the admission of such

evidence to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”

The Court agrees with the Defendant and such evidence will not be admitted.

C. Defendant’s Motion to Dismiss Based on Intentional Destruction of Potentially Material Exculpatory Evidence. [Docket No. 41]

The Court reserves ruling on this motion until after oral argument on January 14, 2013.

Accordingly, based upon the files and records herein, **IT IS HEREBY ORDERED:**

1. Government’s Motion in Limine to Allow Use of Prior Felony Convictions [Docket No. 43] is **GRANTED IN PART AND DENIED IN PART.**
2. Government’s Motion in Limine to Allow Use of 404(b) Evidence [Docket No. 42] is **DENIED.**
3. Defendant Demetrius Demarco Spencer’s Motion to Exclude Rule 404(b) Evidence [Docket No. 40] is **GRANTED.**

Date: January 11, 2013

s/ Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court